

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Tower Jackson LLC)
Dist. 5, Map 79, Control Map 79, Parcel 2) Madison County
Commercial Property)
Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$514,500	\$8,721,400	\$9,235,900	\$3,694,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 29, 2008 in Jackson, Tennessee. In attendance at the hearing were registered agent Patrick H. Musgrave, Frances Hunley, Madison County Assessor of Property and Sherri Marbury, Deputy Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 60.4 acre tract located at 210 American Drive in Jackson, Tennessee formerly utilized by Murray, Inc. as a manufacturing plant. Subject site is currently improved with a 605,977 square foot manufacturing and warehouse facility and a 25,106 square foot light industrial building. The original component of the main building was constructed in 1967 with two additions constructed in 1988 and 1989.

The taxpayer purchased subject property from Tennessee Real Estate Holding Company [“TREHC”] on August 11, 2006 for \$3,800,000. TREHC, in turn, purchased subject property at public auction from Wesley D. Turner (trustee of Murray, Inc.) on September 27, 2005 for \$3,800,000.

The taxpayer contended that subject property should be valued at \$3,800,000.¹ In support of this position, the cost, sales comparison and income approaches were introduced into evidence. Mr. Musgrave maintained that the various approaches supported value indications of \$3,528,000 to \$4,045,500 *after* reducing the indicated values by 40% due to functional obsolescence.

¹ As previously noted, the taxpayer was represented at the hearing by Patrick H. Musgrave, a registered agent employed by the law firm of Evans & Petree. The lawyer who signed the appeal form, Andrew H. Raines, of Evans & Petree, stated in paragraph 16 that “[t]he 2006 purchase price of this property was \$3,800,000 and an appraisal on August 11, 2006 has a value of \$6,100,000. The taxpayer contends the range of value to be \$3,800,000 to \$6,100,000.”

Mr. Musgrave argued that the lack of dock doors and the excessive depth from the dock doors constitutes functional obsolescence that causes a significant diminution in value. Mr. Musgrave analyzed three sales from Memphis which he contended resulted in functional penalties ranging from 41% to 56%.

Mr. Musgrave also relied on the taxpayer's August 11, 2006 purchase of subject property for \$3,800,000 in arriving at his contention of value. Essentially, Mr. Musgrave asserted that the sale was an arm's-length transaction indicative of market value and was consistent with his estimates of market value via the cost, sales comparison and income approaches.

The assessor contended that subject property should be valued at \$7,702,100. In support of this position, the testimony and written analysis of Sherri Marbury, Deputy Assessor was offered into evidence. Essentially, Ms. Marbury relied on the cost approach.

Although Ms. Marbury's analysis included a sales comparison approach, Ms. Marbury stated that she was not relying on that approach in arriving at her estimate of value.

Ms. Marbury maintained that her contention of value was consistent with a fee appraisal prepared by Marshall D. Estep which valued subject property at \$7,550,000.² Ms. Marbury noted the appraisal stated at page 2 that the "[i]nsurable value was estimated to be \$15,600,000 as of August 11, 2006."

The assessor also contended that the taxpayer's September 18, 2006 purchase of subject property was a distressed sale and cannot provide a basis of valuation. In support of this contention, Jerry Sims of the assessor's office testified that it has been his experience in verifying sales that transactions involving special warranty deeds, such as the taxpayer's purchase, typically involve an element of distress.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2)

² As the administrative judge noted at the hearing, the \$7,550,000 figure reflected Mr. Estep's opinion of value as of August 11, 2008 and assumed certain proposed repairs and renovations were completed. Mr. Estep estimated the "as is" value of subject property at \$6,100,000 as of August 11, 2006. Although Mr. Estep appraised the leased fee estate, the administrative judge finds that the value of the fee simple estate appears synonymous.

the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$6,100,000 based upon the totality of the proof. As will be discussed, the administrative judge finds that although Mr. Estep's appraisal report cannot provide a basis of valuation standing by itself, *both* parties proof supports a similar value after the adjustments discussed below.³

The administrative judge finds that the threshold question to be addressed concerns highest and best use. The administrative judge finds that neither Mr. Musgrave nor Ms. Marbury discussed this issue in any detail. The administrative judge finds that the most thorough discussion of this issue was in Mr. Estep's appraisal report. For the reasons stated by Mr. Estep at page 36 of his report, the administrative judge finds that the use of subject property as a multi-tenant warehouse constitutes the highest and best use of subject property as improved.

The administrative judge finds Mr. Musgrave initially concluded that the cost, income and sales comparison approaches support market value indications of \$5,880,000, \$6,672,700 and \$6,574,542 respectively. Mr. Musgrave then reduced each of the indicated values by 40% to account for functional obsolescence. This resulted in estimated values ranging from \$3,528,000 to \$4,045,500.

Respectfully, the administrative judge finds that Mr. Musgrave introduced insufficient evidence to support such a drastic "functional penalty" as he characterized it. Indeed, in the cost approach, Mr. Musgrave's initial value conclusion of \$5,880,000 assumed "physical and functional" depreciation of 78.2%.

³ See, e.g., *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

The administrative judge finds that Mr. Musgrave's asserted functional penalty of 40% was based upon an analysis of three Memphis sales. The administrative judge finds that Memphis and Jackson are distinctly different markets when it comes to warehousing. The administrative judge finds that Memphis, unlike Jackson, is a national leader in warehousing. The administrative judge finds that even if it is assumed *arguendo* that the Memphis properties suffered the drastic functional penalties asserted by Mr. Musgrave, it cannot simply be assumed that a property in Jackson would experience a similar diminution in value. Interestingly, Mr. Estep's cost approach did not even deduct for functional obsolescence. Although Mr. Estep made a significant deduction for external obsolescence (\$3,145,700 via his income approach findings), he nonetheless concluded that the cost approach supported an "as is" value indication of \$6,835,000 as of August 11, 2006.

The administrative judge finds that just as Mr. Musgrave's analysis understates the market value of subject property, Ms. Marbury's cost approach overstates the value of subject property. The administrative judge finds that Ms. Marbury's replacement cost for the main structure assumed light manufacturing with masonry bearing walls. The administrative judge finds that both Mr. Estep's and Mr. Musgrave's replacement costs assumed a mega distribution warehouse building with a metal/steel frame and walls. The administrative judge finds subject building is more appropriately classified as a mega warehouse for the reasons explained by Mr. Musgrave and excerpted from Marshall Valuation Service at page 31 of his analysis.

The administrative judge finds that the taxpayer's purchase of subject property cannot receive any weight absent additional proof.⁴ Most importantly, the administrative judge finds no testimony was introduced into evidence from anybody involved in the sale. It is well recognized that one sale does not necessarily establish market value. As observed by the Arkansas Supreme Court in *Tuthill v. Arkansas County Equalization Board*, 797, S. W. 2d 439, 441 (Ark. 1990):

Certainly, the current purchase price is an important criterion of market value, but it alone does not conclusively determine the market value. An unwary purchaser might pay more than market value for a piece of property, or a real bargain hunter might purchase a piece of property solely because he is getting it for less than market value, and one such isolated sale does not establish market value.

The administrative judge finds the fact TRECH purchased subject property at public auction less than one year earlier for \$3,800,000 was not even addressed by the taxpayer.

⁴ The administrative judge finds it unnecessary to address what, if any, significance should be attributed to the fact subject property was conveyed by special warranty deed. The administrative judge would note, however, that neither party had the benefit of legal counsel when this issue was argued.

Based upon the foregoing, the administrative judge finds that the preponderance of the evidence supports adoption of a value of \$6,100,000.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$514,500	\$5,585,500	\$6,100,000	\$2,440,000


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of February, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Patrick H. Musgrave
Frances Hunley, Assessor of Property